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FISCAL IMPACT REPORT

SPONSOR STBTC **ORIGINAL DATE** 03/01/21 **LAST UPDATED** 03/15/21 **HB** _____
SHORT TITLE Community Solar Act **SB** CS/SB84/ /aSF1#1
/aHENRC/aHSEIC
ANALYST Martinez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$200.0	\$200.0	\$400.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission – Original Bill

State Land Office – Original Bill

SUMMARY

Synopsis of HSEIC Amendment

The House State Government, Elections and Indian Affairs Committee (HSEIC) amendment to Senate Tax, Business and Transportation Committee substitute for Senate Bill 84 as twice amended, includes the following.

Strikes the House Energy, Environment and Natural Resources Committee amendments below:

Section 2 (L) Definition of Subscriber. "and that is by rate class a residential retail customer or a small commercial retail customer or, regardless of rate class, is a nonprofit organization, a religious organization, an Indian nation, tribe or pueblo or apolitical subdivision of an Indian nation, tribe or pueblo or a governmental entity, including a state educational institution, a public school, a public housing authority or other political subdivision of the state or agency, instrumentality or institution of a political subdivision;".

Section 7 (3) Public Regulation Rulemaking. "provided that non-subscribers do not unduly subsidize costs attributable to subscribers"

HSEIC amendment also:

Section 2 (L) Definition of Subscriber. After "facility", insert in lieu thereof "and that is by rate class a residential retail customer or a small commercial retail customer or, regardless of rate class, is a nonprofit organization, a religious organization, an Indian nation, tribe or pueblo or tribal entity, a municipality or a county in the state, a charter, private or public school as defined in Section 22-1-2 NMSA 1978, a community college as defined in Section 21-13-2 NMSA 1978 or a public housing authority;".

Amends the title of Section 7, before "RULEMAKING", inserts "ENFORCEMENT AND".

Section 7 inserts the following new language: "A. The commission shall administer and enforce the rules and provisions of the Community Solar Act, including regulation of subscriber organizations in accordance with the Community Solar Act and oversight and review of the consumer protections established for the community solar program."

Section 7 changes the requirement that the commission provide an initial annual statewide capacity program cap from "one hundred" to "two hundred" megawatts alternating current proportionally allocated to investor-owned utilities until November 1, 2024.

Section 7 amendment also removes the term annual from the following requirement: "the commission to provide the annual statewide capacity program cap shall exclude native community solar projects and rural electric distribution cooperatives.

Section 7 (3) inserts, "provided that non-subscribers shall not subsidize costs attributable to subscribers; and provided further that if the commission determines that it is in the public interest for non-subscribers to subsidize subscribers, non-subscribers shall not be charged more than three percent of the non-subscribers' aggregate retail rate on an annual basis to subsidize subscribers;"

Synopsis of HENRC Amendment

The House Energy, Environment and Natural Resources Committee amendment to Senate Tax, Business and Transportation Committee substitute for Senate Bill 84 as amended, includes the following:

In Section 2, amends the definition of "subscriber" by striking the semicolon and insert in lieu thereof "and the customer is by rate class." This amendment was already included in the Senate floor amendment.

In Section 2, strikes the Senate floor amendment changing the definition of "subscriber." The amendment removes that a subscriber includes, "(1) a residential retail customer; or (2) a small commercial retail customer; provided that small commercial retail customers shall not consume more than forty percent of the aggregate of energy produced from each community solar facility."

In Section 2, strikes the Senate floor amendment changing the definition of "subscriber organization" to include a "qualifying utility."

In Section 5, strikes the Senate floor amendment stating that subscription requirements shall, "including the percentage of renewable energy provided pursuant to the renewable energy

portfolio standard of the Energy Transition Act;”

In Section 7 (6) Public Regulation Commission Rulemaking, strikes the amendment which inserts, “such that a qualifying facility and its non-subscribing customers do not subsidize the costs attributable to the subscriber organization pursuant to this paragraph.”

In Section 7 (8) Public Regulation Commission Rulemaking, in regards to a bill credit, strikes the amendment which inserts, "and provided that non-subscribers do not subsidize costs attributable to subscribers".

In Section 2 (L) amends the definition of subscriber to include, “and that is by rate class a residential a residential retail customer or a small commercial retail customer or, regardless of rate class, is a nonprofit organization, a religious organization, an Indian nation, tribe or pueblo or apolitical subdivision of an Indian nation, tribe or pueblo or a governmental entity, including a state education institution, a public school, a public housing authority, or other political subdivision of the state or agency, instrumentality or institution of a political subdivision;”

In Section 2 (M) amends the definition of subscriber organization to include a “qualifying utility,” which was already included in the senate floor amendment, however, was stricken in the current HENRC amendment mentioned above, this amendment is adding it back in again.

On page 6, inserts the new subsection, “C. Notwithstanding any provision of the Public Utility Act to the contrary, a person not otherwise a public utility shall not be deemed to be a public utility subject to the provisions of the Public Utility Act solely because the person owns, controls, or operates all or any part of a community solar facility.”

In Section 7 A (6) Public Regulation Commission Rulemaking, the amendment inserts, “such that a qualifying utility and its non-subscribing customers do not subsidize the costs attributable to the subscriber organization pursuant to this paragraph.” This was already included in the Senate floor amendment, however, was stricken in the current HENRC amendment mentioned above, this amendment is adding it back in again.

In Section 7 A (8) Public Regulation Commission Rulemaking, the amendment inserts “provided that non-subscribers do not unduly subsidize costs attributable to subscribers.” This was already included in the Senate floor amendment, however, was stricken in the current HENRC amendment mentioned above, this amendment is adding it back in again.

Synopsis of SFI#1 Amendment

The Senate floor #1 amendment to Senate Tax, Business and Transportation Committee substitute for Senate Bill 84 include the following:

1. Section 2 (L). Amends the definition of subscriber to
 - (1) a residential retail customer; or
 - (2) a small commercial retail customer; provided that small commercial retail customers shall not consume more than forty percent of the aggregate of energy produced from each community solar facility
2. Section 2 (M) Amends the definition of subscriber organization to include a qualifying utility

3. Section 5 (a) 1. Amends subscription requirements to include percent of the subscriber's average annual electricity consumption, including the percentage of renewable energy provided pursuant to the renewable energy portfolio standard of the Energy Transition Act
4. Section 7 (3) deletes that the Public Regulation Commission shall adopt rules requiring a target thirty percent annual statewide carve-out of the annual statewide capacity program cap, and inserts “thirty percent of electricity produced from each community solar facility”
5. Section 7 (4) amends that the Public Regulation Commission shall adopt rules to establish a process for the selection of community solar facility projects and allocation of the statewide capacity program cap, inserting “consistent with Section 13-1-21 NMSA 1978 regarding resident business and resident veteran business preferences”
6. Section 7 (6) amends that the Public Regulation Commission shall adopt rules “such that a qualifying facility and its nonsubscribing customers do not subsidize the costs attributable to the subscriber organization pursuant to this paragraph”
7. Section 7 (7) amends that the Public Regulation Commission shall adopt rules that provide for customer protections for subscribers including “security interest... as well as grievance and enforcement procedures”
8. Section 7 (8) amends that the Public Regulation Commission shall adopt rules to provide a community solar bill credit... “and provided that non-subscribers do not subsidize costs attributable to subscribers”
9. Section 9 deletes “Exclusions from Commission Regulation” in its entirety.

Synopsis of Original Bill

The Senate Tax, Business and Transportation Committee substitute for Senate Bill 84 creates the Community Solar Act which provides for the development and operation of community solar facilities within the service territory of investor-owned electric utilities and, on an opt-in basis, of rural electric cooperatives. A community solar facility is a solar electric generation facility, where other energy resources may be co-located, owned and operated by a subscriber organization. SB84/STBTCS requires that RECs be owned by the qualifying utility to which the facility is interconnected. The Public Regulation Commission shall adopt rules to establish a community solar program by no later than April 1, 2022.

A subscriber organization is not to be considered a public utility subject to the oversight of the PRC and rates paid by subscribers are not to be subject to regulation by the PRC. The public utility serving the area where the community solar facility is located shall effectively acquire the subscribed output from the community solar facility by providing bill credits to its customers who are also subscribers to the community solar facility in proportion to each subscriber's interest in the community solar facility for at least 25 years following the community solar facility's interconnection. To the extent there remains unsubscribed output from the community solar facility that is not distributed to the existing subscribers, the public utility shall acquire that energy annually at the utility's avoided cost rate filed with the PRC.

Community solar facilities are solar electric generation facilities with nameplate rated production capacity of five (5) megawatts or less each, located within the service territory of an investor-owned electric utility. Community solar facilities are to be interconnected with the utility's distribution system. Shares of the energy produced by a community solar facility are effectively made available to subscribers based on their relative interest. Any retail customer of the public

utility which serves the area where the facility is located can be a subscriber. Each subscription shall be sized to supply not more than 120 percent of the average annual electricity consumption at the premises to which the subscription is attributed. At least 40 percent of each community solar facility's capacity is to be available in in subscriptions of 25 kW or less. At least 10 subscribers must be associated with a single facility and no single subscriber may be allocated more than 40 percent of the facility's capacity. This bill provides exemptions to many of these conditions for community solar facilities located on the lands of Indian nations, tribes or pueblos that exclusively serve subscribers on those lands.

A subscription shall be transferrable and portable within a public utility's service territory.

In payment for the subscribed output of a community solar facility, SB84/STBTCS prescribes the determination of a credit provided by the public utility to the subscribers for their share of the output. This applicable rate credit is the result of taking the utility's total aggregate rate minus the utility's distribution cost rate. This credit is applied to each subscriber's proportionate share of the facility's actual generation. The public utility and the subscriber are required to exchange the information necessary for the public utility to issue the correct community solar bill credits to those retail customers who are also subscribers. The public utility is to provide a monthly report to the subscriber organization about the total value of the community solar bill credits for the month as well as the amount of the community solar bill credits applied to each customer while the subscriber organization is to provide the public utility with real-time production data, monthly generation data with the amounts attributable to each subscriber.

All renewable energy certificates (RECs) generated from a community solar facility may be sold or transferred by the subscriber organization to the interconnected public utility.

SB84/STBTCS requires that the PRC develop rules to establish a community solar program by April 1, 2022 which address several matters including: 1) an initial statewide capacity program cap of 100 MW allocated proportionally to investor-owned utilities until November 1, 2024 excluding native and rural electric cooperative solar community solar projects; 2) a subsequent statewide capacity program cap effective after November 1, 2024; detailing tariffs, agreements and forms required to be filed by a public utility; 3) establishing a 30 percent community solar capacity carve-out for low-income customers and low-income service organizations, with guidelines for program compliance and customer pre-qualification; 4) establishing a process for project selection and allocation of the capacity cap; 5) requiring affected public utilities to file tariffs, agreements or forms necessary to implement the community solar program; 6) establishing standards, fees and processes for the interconnection of community solar facilities allowing for the recovery of reasonable interconnection costs and of reasonable administrative program costs; 7) providing for consumer protection including multi-lingual disclosure requirements to potential subscribers about future costs and benefits as well as key contract terms; 8) establishing a community solar bill credit mechanism based on an aggregate retail rate by customer class less commission approved distribution cost components; 9) allowing reasonable opportunities for the creation, financing and accessibility of community solar facilities; and 10) providing requirements for the siting and co-location of community solar facilities. For this rulemaking process, the commission is to solicit input from stakeholders including state agencies, utilities, low-income organizations, disproportionately impact communities, potential owners or operators, Indian nations, tribes, and pueblos, and other interested parties.

By November 1, 2024, the commission is to report to the appropriate interim legislative

committee on the status of the community solar program, including its development and adequacy, utility participation, low-income participation, alternative rates or bill credits, cross-subsidization, impact on renewable portfolio standard compliance, and the effectiveness of the commission's rules along with any recommended changes.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

The PRC was not given ample time to provide analysis on the substitute, however the fiscal impact remains the same as the original bill.

The PRC stated that the original SB84/STBTCs as amended would require hiring of two additional staff, one attorney and one economist, at a cost of \$200 thousand from the general fund. This is a recurring cost to the general fund. In the substitute, the time was extended by 5 months for the PRC to develop rules to establish a community solar program. However, if enacted, the PRC will still need staff to administer the program for the foreseeable future, assuming the expense to the operating budget will be the same as in the original bill.

The PRC is currently understaffed for the amount of statutory requirements of recent years, such as the Energy Transition Act, passed in the 2019 regular session. SB 84/STBTCs as amended would add on to these requirements, and unless an appropriation is included in the legislation it will be another unfunded mandate.

The PRC has also experienced hiring freezes mandated by the State Personnel Office during Covid-19, delaying critical hires that are needed for statutorily required mandates.

The State Land Office provided the following on the original bill:

The bill does not have a direct fiscal impact on the State Land Office. However, the legislation would result in an undetermined positive impact with respect to expanded renewable energy leasing opportunities and related income for state land trust beneficiaries.

The State Land Office leases land for solar and wind projects of various sizes. Currently, there are 23 active long-term leases for renewable energy projects; sixteen of which are for wind farms while seven leases are for solar power facilities. Additionally, there are 51 applications currently being processed to lease state trust land for the development of wind and solar power facilities.

With about nine million acres of surface estate throughout New Mexico, the State Land Office is well-positioned to offer land for renewable energy projects of all sizes. The five MW maximum threshold capacity for community solar facilities set by this bill could have an impact on a number of pending solar applications that may benefit from a community solar program. Similarly, the outcome of NMPRC's rulemaking on siting and collocating community solar facilities could have an impact on the pending solar applications.

For example, the State Land Office is currently processing 12 applications to lease state

trust lands for 10 MW solar projects (located in Valencia, Doña Ana, Otero, Eddy and Lea Counties). If a lease is issued in response to each of these applications and the projects proceed to the development and operations phase, with each producing an estimated annual rental payments of \$30 thousand, an additional \$360 thousand could potentially be distributed to the beneficiaries each year through the land grant maintenance fund.

SIGNIFICANT ISSUES

The PRC was not given ample time to provide analysis on new material in the STBTC substitute for SB84/STBTC. Being that the PRC will have a significant increase of responsibilities, including establishing a new program and administering the new program. It is crucial that the PRC provide feedback on how the STBTC substitute for SB 84 will impact not only the commission but the rate payers in the state.

The Public Regulation Commission provided the following on the original bill as amended:

SB84 permits a community solar facility to be physically located very far away from a subscriber as long as both are interconnected with the distribution grid of the same public utility. Such a subscriber would then rely extensively on the investor owned public utility's (IOU) grid to take the electricity generated by the community solar facility. In this scenario, that may not be the most cost effective manner of delivering electricity to a subscriber which may not be consistent with the Public Utility Act's requirement that utilities deliver electricity in the most cost effective manner.

Pursuant to the current Efficient Use of Energy Act, Section 62-17-10 NMSA 1978 (EUEA) IOUs are required to periodically file an "integrated resource plan" (IRP) and the NMPRC has promulgated IRP Rules that provides for utilities, stakeholders and ratepayers to collaborate in the long-term development of a IRP Plan of adequate resources to meet projected load. SB84 allows for the possibly independent development of community solar facilities outside of the IRP Plan. Subscriber organizations that are not public utilities or affiliated with public utilities, under SB84, can add generation capacity to the utility's resource portfolio without paying attention to the utility's requirement, under the IRP law and Rule, to serve its customers with the most reasonable and cost effective mix of generation resources.

Section 7 A (8) of SB84 provides for a community solar bill credit rate mechanism to be established by commission rule to compensate subscribers for their share of the community solar facility's output. The credit is to be based on a total aggregate retail rate by customer class that encompasses all utility charges other than minimum monthly charges and other charges such as energy efficiency program riders. The "total aggregate retail rate" is adjusted by deducting (i.e. reducing the credit) the distribution cost component which is the cost of the utility's power distribution function. The result of this calculation is that the bill credit rate used to calculate each subscribing customer bill credit does not recover utility generation and transmission costs associated with energy displaced by community solar facilities from subscribing customers. This ratemaking treatment in SB84 may constrain the ability of the commission, with its unique expertise, to establish what the reasonable incremental impact of the community solar facilities is. SB84 appears to eliminate the ability of the NMPRC to do a cost/benefit analysis and

modify the applicable bill credit rate. The bill credit rate should be revised to account for the utility's costs and benefits attributable to the customer's subscription—not just benefits. In conclusion, the applicable bill credit rate established by SB84 prevents the PRC from exercising its customary authority to allocate benefits and cost fairly among customers and it may potentially result in shifting costs from subscribing customers to non-subscribing customers.

SB84 provides for the commission to promulgate rules by November 1, 2021 that address a number of elements such as statewide program capacity capping, low-income capacity carve-outs, tariffs, date certain implementation, capacity caps, interconnection, project selection criteria, utility recovery of administrative costs, robust community solar development, consumer protection, pre-qualification of low-income subscribers, affordable housing participation, creation and financing of community solar facilities, and siting and co-location. Given that this bill would only become effective on July 1, 2021, that would provide up to four months to complete the rulemaking. Rulemakings proceedings are inherently complex multi-step proceedings that require significant due process including rounds of public notice, stakeholder deliberations, commission action, and official recording on the New Mexico Administrative Code. It would be very difficult to reasonably complete this process within four months and this could be fixed by changing the date to July 1, 2022.

SB84 does not appear to prevent a public utility or its affiliate from being the owner and/or operator of a community solar facility. Under this circumstance, the public utility or its affiliate would be both the seller and the buyer of the energy generated by the community solar facility which raises the issue of whether this may risk increased costs to retail customers due to self-interested pricing.

SB84 does not appear to prevent co-location of multiple community solar facilities at the same site or contiguous, thus possibly circumventing the 5 MW capacity limitation. However, it appears that Section 7 A (10) of SB84 allows for the commission to address co-location and siting in the promulgation of rules to be adopted by November 1, 2021.

The State Land Office provided the following on the original bill as amended:

The expansion of leasing of state trust lands for renewable energy projects is a top priority of Commissioner Garcia Richard. Renewable energy projects are important in meeting the state's clean energy needs, but also providing an important revenue stream for public schools, universities and hospitals to the extent they occur on state trust lands.

Recognizing and leveraging New Mexico's superior position with respect to renewable energy potential, Commissioner Garcia Richard established the State Land Office's first ever Office of Renewable Energy, which is a distinct office focusing on expediting solar and wind projects on state trust lands.

By establishing a framework that fosters the development of community solar projects throughout the state, the bill would enhance the State Land Office's ability to generate revenue and diversify its income streams in a sustainable manner.

PERFORMANCE IMPLICATIONS

The State Land Office provided the following on the original bill:

The bill would help the State Land Office achieve its goals of expanding renewable energy development in New Mexico.

ADMINISTRATIVE IMPLICATIONS

The State Land Office provided the following on the original bill:

The bill would create new solar leasing opportunities for the State Land Office, which would have a manageable administrative impact.

The Public Regulation Commission provided the following on the original bill as amended:

This FIR reflects PRC’s technical staff’s analysis consistent with commission policy, rules, and precedent, but does not reflect a position ratified by a vote of the full commission.

While the NMPRC regulates “public utilities” as defined by the Public Utility Act, Section 62-3-3 (G) NMSA 1978, the NMPRC does not regulate affiliates of public utilities or 3rd parties, both of which may own or operate community solar facilities. To the extent that both regulated and un-regulated entities can play a role in the development and operation of community solar facilities, there can potentially be conflicts in regulation of community solar facilities that are similar but are subject to different regulatory oversight by the NMPRC. While the NMPRC would have jurisdiction over a number of facets of the relationship between the subscriber and the community solar facility owner/operator, the insertion of 3rd parties including affiliates of public utilities into these relationships raises questions about the NMPRC’s authority over possible disputes.

While SB84 explicitly provides in Section 9 that subscriber organizations are not to be considered public utilities subject to regulation by the NMPRC and that subscription rates are not subject to regulation by the NMPRC, the establishment of a community solar bill credit rate mechanism by commission rule is nevertheless provided for by Section 7 A (8) of SB84. Furthermore, the NMPRC, pursuant to Section 7 A(7) is required to provide consumer protections to subscribers relative to subscriber organizations that the Commission does not appear to regulate.

TECHNICAL ISSUES

The Public Regulation Commission provided the following on the original bill:

SB84 provides in Section 8 that subscriber organizations or subscribers to a community solar facility are not a “public utility” as defined by the Public Utility Act Section 62-3-3 (G) NMSA 1978 however, it does not specifically amend Section 62-3-3 (G) to exclude “subscriber organizations” or “subscribers” from the definition of “public utility”. This is a technical issue that would best be fixed before final passage of the bill.

SB84 should be amended to add language to make it clear that community solar facilities owned and operated by utilities are subject to commission approval of a certificate of convenience and necessity pursuant to the Public Utility Act, Section 62-9-1 NMSA 1978.

SB84 should be amended to make it clear that community solar facilities are not covered by the provisions of Section 62-13-13.1 (C) (2) and are excluded from the definition of “renewable energy distributed generation facility”

SB84 defines “qualifying utility” in part as an investor-owned electric public utility “certified” by the PRC to provide retail electric service. Utilities are not “certified” by the PRC. Rather, they are subject to the PRC’s regulatory oversight pursuant to the Public Utility Act.

ALTERNATIVES

The Public Regulation Commission provided the following on the original bill:

If SB84 is not enacted, the NMPRC has, within the limits of its present authority, the ability to promulgate rules regarding the development and regulation of community solar facilities. The NMPRC currently has a pending Notice of Inquiry docket that is investigating this issue, Case No. 15-00355-UT, *In the Matter of a Commission Inquiry into Public Utilities Constructing and Owning Distributed Generation Dedicated to Serving One or More Retail Customers*.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Public Regulation Commission provided the following on the original bill:

The status quo will remain which is that there remains a significant potential for further penetration of distributed generation throughout the New Mexico service territories of the three investor-owned electric utilities by the building of community solar facilities in accordance with existing laws.

The State Land Office provided the following on the original bill:

It will be more difficult for the State Land Office to lease its lands for smaller-scale solar projects, resulting in the loss of potential revenue.

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